COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 334 of 2002

Km. Oshika Thapliyal, through her natural guardian and next friend Smt. Sushila Thapliyal, R/O 19/6, E.C.Road, Dehradun. (Claimant)

… Appellant.

Versus

1. Ashok Thapliyal S/O Shri Dhaniram Thapliyal, R/O B-XII/8015, Vasant Kunj, New Delhi.
2. New India Insurance Company through its Divisional Manager, Astley Hall, Dehradun.

… Respondents.

Sri L.K. Tiwari, learned counsel for the appellant.
Sri D.K.Sharma, Adv., learned counsel for the respondents.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date July 13, 2006.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and order dated 9-9-2002, passed in M.A.C. Petition No. 22 of 1995, Km. Oshika Thapliyal Vs. Ashok Thapliyal and others, by Motor Accident Claims Tribunal/District Judge, Dehradun **(*in short the Tribunal*),** whereby the learned Tribunal has dismissed the claim petition holding that the factum of the accident and the accidental death of the deceased Beena Thapliyal could not be established by the claimant.

Relevant facts necessary for a just decision of the appeal are that the claimant-appellant filed a claim petition before the learned Tribunal, which was registered as MAC No. 22 of 1995 with the allegation that Smt. Beena Thapliyal, the mother of the claimant, aged 37 years and a teacher by profession earning Rs. 5,000/- per month lost her life as a result of fatal injuries suffered by her in a motor accident involving Maruti Car No. DL ICC 6390 on 4-3-1994 at about 12-15

p.m. at Chauli between Chhutmalpur and Bhagwanpur, District Haridwar. It has been stated that the vehicle involved in the accident belonged on Shri Ashok Thapliyal and it was duly insured with the New India Assurance Company Ltd. The claimant being minor the claim petition was filed by the grand mother of the minor claiming compensation of Rs. 10,75,000/-.

The Opposite Party No.1 Ashok Thapliyal, who is the owner and driver of the car in question filed written statement with the assertion that the car in question was duly insured with the New India Assurance Company. He has admitted the date, time and place of the accident .

The Opposite Party No.2 Insurance Company filed the written statement and contested the case on the ground that the cause of death of the deceased was not known as the autgopsy was not conducted on the body of the deceased. It was also pleaded that the Opposite Party No.1 had no valid driving licence.

On the pleadings of the parties, the learned Tribunal framed the following issues:-

1. Whether the alleged accident occurred due to rash and negligent driving of vehicle No. DL 1 CC-6390, by O.P.No.1?

2. Whether the Tribunal does not have the jurisdiction to try and decide this case?

3. To what amount of compensation, if any, is the claimant entitled to and from which of the O.Ps.?

The claimant in support of her claim has produced Smt. Sushila Thapliyal as P.W.1 and Poonam Thapliyal as P.W.2. P.W.2 is allegedly eye witness of the occurrence. Claimant also produced

P.W.3 Constable Clerk Katar Singh of Police Station Bhagwanpur. In documentary evidence, the claimant filed copy of insurance policy of the car in question as well as death certificate of deceased Beena Thapliyal, etc. including photo copy of the F.I.R. A reference to these papers shall be made in the later part of the judgment at appropriate place as and when necessary. The Issue No. 2 relating to jurisdiction of the court was decided by the learned Tribunal as far back on 23.5.1996 and it was held that the Tribunal has jurisdiction to try the claim petition.

The learned Tribunal recorded evidence led by the parties, heard them and after perusing the evidence on record, has while taking up the Issue no. 1 for decision, elaborately discussed the evidence on record. The learned Tribunal ultimately came to the conclusion that the claimant had failed in establishing that Smt. Beena Thapliyal died in a motor accident as alleged in the claim petition and that the car in which was travelling was driven rashly and negligently by its driver, the O.P.No.1. Accordingly, on the basis of its finding recorded on Issue No.1, the claim petition was found to be devoid of merit and the same was dismissed by the impugned judgment and order. Aggrieved by the order of the Tribunal, the claimant has come up in appeal.

It has been contended by the appellant that the impugned order dismissing the claim petition is illegal and not based of the evidence on record.

We have heard learned counsel for both the parties and perused the material on record including the lower court record.

The admitted facts of the case are that the claim petition has been filed under the provision of Section 166 of the Motor Vehicles Act, 1988. It is also admitted that the Maruti Car belonged to

Ashok Thapliyal, who is husband of the deceased and who was driving the car at the relevant time. It is also admitted that the claimant was also sitting in the very car at the time of accident. It also comes out from the record that the owner-cum-driver of the car had only filed his written statement and thereafter, he had not prosecuted the case before the Tribunal. It is also admitted that no autopsy had been conducted on the dead body, rather the dead body of the deceased was disposed of hurriedly. P.W.1 Smt. Sushila Thapliyal is the grand mother of the claimant. Her deposition is not material for determination of controversy involved in the appeal.

It is pertinent to mention that in the claim petition in clause no. 12 regarding nature of injuries sustained, it has been mentioned to the effect ***"Fatal injuries, died on way to Hospital."*** From the side of the claimant, P.W.2 Km. Poonam Thapaliyal was produced before the Tribunal as eye witness. She also deposed on oath that Beena Thapliyal died while she was being carried to the hospital. But strangely enough, from the side of the claimant, neither any document showing that the injured Beena Thapliyal was taken to any hospital nor autopsy was conducted in the present case. Moreover, PW 2 further stated that the report of the accident was lodged with the police by the O.P.No.1 Ashok Thapliyal on the same day (i.e. on 4-3-1994). In the present case, from the side of the claimant P.W.3 Constable Katar Singh was produced before the Tribunal on 12-8-2002. He brought original General Diary of the Police Station for the relevant period. It is pertinent to note that the copy of written F.I.R. was drawn in the General Diary on 7-3-1994 at report no. 25 at 6-15 p.m. In the copy of the G.D. there is no date below the signature of Ashok Thapliyal, though in the copy of F.I.R. there is mention of date below the signature alleged put by Ashok Thapliyal. A perusal of the deposition of this constable P.W.3 shows that the entry in the General Diary was made by the police as late as 7-3-1994, though the FIR was allegedly lodged with the police on 4-3-1994. The PW 3 has not explained as to why this entry of the FIR, which was lodged with the

police three days earlier was made so late. When cross-examined, this witness could not say as to who had made entry in the General Diary. Admittedly the cremation of the dead body was conducted on 5-3-1994 at Hardwar Sewa Samiti. When according to the eye-witness, P.W.2 the deceased Beena had died on way to hospital between Bhagwanpur and Roorkee, what was the need to take the dead body for cremation to Hardwar without getting the Post Mortem carried out. Had the dead body been taken to hospital even after the death, inquest proceedings and post mortem etc. could not have been avoided in the event the deceased had sustained ante mortem fatal injuries on her body.

The learned Tribunal has already scrutinized the material on record very closely. Paper No. 35-C allegedly signed by the Station Officer P.S. Bhagwanpur is dated 13-2-1994 while the death of Beena Thapliyal admittedly occurred on 4-3-1994. A presumption can be raised that had there been any F.I.R. with the police regarding the accidental death of Smt. Beena Thapliyal on the date of accident, i.e. 4-3-1994, there was no occasion for the bereaved family to have taken custody of the dead body without getting necessary formalities completed by the police regarding preparation of inquest report, post mortem etc.

Judicial notice can also be taken of the fact that in the present case, in the F.I.R. there is averments about damage to the car besides injuries to Smt. Shakuntala Bahuguna and Km. Poonam Thapliyal, but surprisingly no injury was experienced by the driver-cum-owner Ashok Thapliyal. None of the injured persons thought it proper to get their injuries examined by the doctor at any time. It is pertinent to mention that even on the copy of F.I.R. the date of receipt was put by the police officials of Police Station Bhagwanpur as 7-3-1993. However, no explanation has come forward all a number of discrepancies, but in can be taken at any rate that police was not informed in the present case from 4th March to 6th of March, 1994.

The learned Tribunal has rightly discarded the documentary evidence filed by the claimant in the present case.

P.W.3 Constable Clerk Katar Singh has shown his inability to recognize the handwriting of the police constable who had made entry in the G.D. After having gone through the evidence on record especially the statement of P.W.3 Constable Katar Singh read with copy of General Diary dated 7-3-1994 and other discrepancies already referred to above, we are of the considered view that the police agency was not informed regarding the accident till the time of making entry in the General Diary of the Police Station dated 7-3-1994, therefore, there was no occasion for the police to have come into action and this circumstance leads to the inference that on this account neither inquest report could be prepared nor post mortem of the dead body was conducted. Moreover, even if any report was lodged regarding the accident wherein the vehicle was reported to have been damaged, some document must have been prepared by the police regarding the inspection of the vehicle etc. particularly because there is specific mention that substantial damage was caused to the car involved in the accident wherein one person died leaving other occupants unhurt seriously. The circumstance itself speaks volumes regarding the present accident.

Admittedly the owner-cum-driver of the Maruti Car No. DL 1 CC-6390 Ashok Thapliyal is the husband of the deceased Beena Thapliyal. He had filed his written statement. But surprisingly, he did not choose to appear in the witness box and to narrate the entire story from his own mouth regarding the manner of motor accident, because even if the F.I.R. paper no. 34-C is relied upon for the sake of argument, he was left without injury and the owner of the vehicle was the best witness to depose regarding the damage caused to the Maruti Car. It appears that the owner of the vehicle did not like to file any

claim against the Insurance Company for damages caused to the vehicle. There is no reliable evidence to indicate rashness or negligence in driving on the part of the driver of the vehicle.

It may also be noted that in all the papers including the registration of death of deceased Beena Thapliyal, the address of the Opposite Party No.1 Ashok Thapliyal is mentioned 19/6 E.C.Road Dehradun but in the memo of claim petition, the claimant had given the address of the owner-cum-driver Ashok Thapliyal as R/O B-XII/8015, Vasant Kunj, New Delhi. However, in the copy of driving licence, the address of Ashok Thapliyal has been given as 21/9 East Canal Road, Dehradun.

The learned Tribunal has rightly thrashed out the truth in the case at hand and has rightly come to the conclusion that the death of deceased Beena Thapliyal in the motor vehicle accident. The learned Tribunal has also rightly held that rash and negligence on the part of the driver-cum-owner of the vehicle has not been established. Having considered the entire material from all the four corners, we do not find any merit in the appeal preferred by the claimant-appellant and the appeal deserves to be dismissed outright.

For the reasons and discussion above, the appeal is devoid of merit. The impugned order of the learned Tribunal does not call for any interference by this Court.

The appeal is dismissed. The judgment and order, under appeal, is hereby upheld. No order as to costs.

13-07-2006 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP